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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. CR 2008-1339

Div. 6

DEFENDANT'S MOTION FOR
REEXAMINATION OF
CONDITIONS OF RELEASE

(Oral Argument and Evidentiary
Hearing Requested)

Defendant Steven C. DeMocker, by and through counsel, hereby requests that this court reexamine his conditions of release, pursuant to Ariz. R. Crim. Pro. 7.4(b) and A.R.S. § 13-3967(G). Mr. DeMocker also requests that the Court provide notice to any person having declared victim status in the case in advance of any order amending release conditions pursuant to A.R.S. §§ 13-3967(G) and 13-4406.

BACKGROUND

On December 23 and 24, 2008 and on January 13 and 15, 2009, this Court took evidence and heard argument to determine if the State had met its burden with respect to

SUPERIOR COURT
COUNTY OF YAVAPAI
2009 AUG 26 PM 2:11
JEANNE L. LOCKS, CLERK
Heather Figueroa
BY: _____

1 “proof evident” or “presumption great” existing that Mr. DeMocker committed the
2 offenses for which he is charged. On January 22, 2009, the Court found that the State
3 had not met its burden and that therefore Mr. DeMocker was entitled to bail pursuant to
4 A.R.S. § 13-3962. On that same date, this Court set bond at \$2,500,000, to be posted in
5 cash or by a secured appearance bond through a bail bondsman. Subsequently, on
6 January 28, 2009, Mr. DeMocker filed a motion asking the Court to reexamine his
7 conditions of release. That motion was denied on April 30, 2009.

8 On application, Mr. DeMocker is entitled to have his conditions of release
9 reviewed by the judicial officer that imposed them and the Court may amend the order
10 to employ different or additional conditions of release, including a reduction in bail.
11 A.R.S. § 13-3967(G). Mr. DeMocker also requests that the Court notify any person
12 who has declared victim status as required under A.R.S. §§ 13-3967(G) and 13-4406.
13 Material facts not previously presented to the Court regarding the availability of highly
14 sophisticated GPS based active electronic monitoring and tracking in conjunction with
15 the use of the Pretrial Services program of the Yavapai County Adult Probation
16 Department, the remarkable weakness of the evidence against Mr. DeMocker despite
17 nearly fourteen (14) months of investigation by law enforcement, and the impact of Mr.
18 DeMocker’s conditions of confinement on his ability to meaningfully assist in his own
19 defense are available, will be discussed herein, and will be presented in more detail to
20 the Court at the evidentiary hearing on this motion set for September 22, 2009. Ariz. R.
21 Crim. P. 7.4(b). Mr. DeMocker hereby requests that this Court reduce his bond amount
22 and consider setting additional conditions of release to include GPS active electronic
23 monitoring¹ to be paid for by Mr. DeMocker, together with supervision by the Pretrial
24 Services program of the Yavapai County Adult Probation Department.
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27 ¹ Use of electronic monitoring is specifically contemplated in A.R.S §1303967(E)(1).
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ARGUMENT

I. The Purpose of Bail is to Secure Mr. DeMocker's Appearance.

Pursuant to A.R.S. § 13-3961(B), the purposes of bail and conditions of release are to assure the appearance of the accused, protect against the intimidation of witnesses, and protect the safety of the victim, any other person, or the community. *See* A.R.S. § 13-3961(B) 1-3. In this case, there are no issues with respect to the intimidation of witnesses or protection of anyone or the community. Therefore, the proper purpose of bail and conditions of release are solely to assure the appearance of Mr. DeMocker. As the Arizona Supreme Court has held:

Bail is exacted for the sole purpose of securing the attendance of the defendant in court at all times when his presence may be lawfully required, and his surrendering himself in execution of any legal judgment that may be pronounced against him, and any bail fixed at more than is necessary to secure that appearance is excessive within the meaning of the constitution.

Gusick v. Boies, 71 Ariz. 233, 236, 233 P.2d 446, 448 (1951) (internal citations omitted). Excessive bail is likewise “not to be required for the purpose of preventing the prisoner from being admitted to bail.” *Id.* (citations omitted).

II. This Court Should Lower the Bond Amount.

A.R.S. § 13-3967 (B)² outlines the appropriate considerations for the Court to use in determining the method of release or the amount of bond. These considerations include the following: the views of the victim; the nature and circumstances of the offense; the weight of the evidence against the accused; the accused's family ties, employment, financial resources, character and mental condition; the results of any drug test; whether the accused is using any illegal substances; whether the accused violated

² Because a *Simpson* determination has been made that Mr. DeMocker is entitled to bail, A.R.S. § 13-3967 applies.

1 certain drug laws; the length of residence in the community; the accused's record of
2 arrests and convictions; and the accused's record of appearance at court proceedings or
3 of flight to avoid prosecution or failure to appear.

4 An analysis of these factors weighs heavily in favor of substantially reducing Mr.
5 DeMocker's bond amount from \$2,500,000 to no more than \$250,000. As will be
6 detailed below, the Court has previously found that the weight of the evidence against
7 Mr. DeMocker does not rise even to the level of proof evident or presumption great.
8 The Court also found that no motive for the crime is apparent even after hearing four
9 days of testimony in a *Simpson* hearing and after a thorough review of the grand jury
10 transcript. Despite more than a year of additional investigation, including repeated
11 testing of biological evidence, the State has failed to produce any new or additional
12 evidence of Mr. DeMocker's guilt in this case. Mr. DeMocker has lived in Prescott for
13 over 20 years, and prior to his arrest, was a successful financial advisor and a respected
14 and law-abiding member of the community. He has significant family ties, and his
15 family has shown a strong presence and support for Mr. DeMocker throughout these
16 proceedings. There are no allegations or suggestions involving illegal substance abuse
17 nor are any drug offenses charged. Mr. DeMocker has never been arrested before and
18 has no prior felony convictions, nor has he ever failed to appear in any court
19 proceeding. His daughters, victims in this case, strongly support his release on bond
20 pending trial as requested in this motion. All of these considerations - the weight of the
21 evidence; Mr. DeMocker's family ties, his employment, financial resources, character
22 and mental condition; the absence of any illegal drug issues; the length of Mr.
23 DeMocker's residence in the community; his lack of any prior arrests or convictions;
24 and his staying put during four months of intensive investigation and prejudicial
25 publicity in the face of an impending arrest - point clearly to a reduction in the amount
26 of bond. If the Court were to lower the bond amount to an amount Mr. DeMocker and
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1 his family can reasonably afford and place Mr. DeMocker on the kind of electronic
2 monitoring proposed herein, the purposes of bond would be met and the Court will be
3 assured of Mr. DeMocker's appearance.
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5 **III. The Court May Order Electronic Monitoring as a Condition of**
6 **Release to Assure Mr. DeMocker's Future Appearance.**

7 Pursuant to statute, the Court may, after giving notice to the victim, impose any
8 other conditions deemed reasonably necessary to assure appearance as required"
9 A.R.S. § 13-3967(D). Electronic monitoring is specifically mentioned therein as a
10 possible condition of release, where it is available. A.R.S. § 13-3967(E)(1). Mr.
11 DeMocker and his family have further investigated the availability of active GPS
12 monitoring and have located a provider that offers active, real time GPS monitoring and
13 tracking. As will be more fully explained at the hearing on this motion, the provider
14 immediately notifies the Court and/or or the Court's designee(s) in the event that Mr.
15 DeMocker violates any geographical restrictions set as conditions of his release, or if he
16 attempts to remove or otherwise tampers with the equipment. Mr. DeMocker and his
17 family agree to pay all the costs of GPS monitoring ordered by this Court. This will
18 save the County the considerable costs of incarcerating Mr. DeMocker. This
19 sophisticated active GPS monitoring will help reassure the Court of Mr. DeMocker's
20 future appearance, consistent with his previous behavior in this case.

21 Mr. DeMocker further suggests that this Court order his supervision by the
22 Pretrial Services program of the Adult Probation Department. They would, in addition
23 to having round-the-clock surveillance officers who could receive notices from the
24 electronic monitoring provider, be able to provide physical surveillance of Mr.
25 DeMocker and require him to personally report to his assigned officer as frequently and
26 on whatever other basis they and the Court deem appropriate.
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1 with the monitoring device, the monitoring company shall promptly notify
2 the Court and/or his designee(s) of that fact.

- 3 4. Directing the Pretrial Services program of the Yavapai County Adult
4 Probation Department to supervise Mr. DeMocker pending trial.

5 DATED this 26th day of August, 2009.

6
7 By: 

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10 Prescott, Arizona 86301

11 OSBORN MALEDON, P.A.
12 Larry A. Hammond
13 Anne M. Chapman
14 2929 N. Central Avenue, Suite 2100
15 Phoenix, Arizona 85012-2793

16 Attorneys for Defendant

17 ORIGINAL of the foregoing filed
18 this 26th day of August, 2009, with:

19 Jeanne Hicks, Clerk of the Court
20 Yavapai County Superior Court
21 120 S. Cortez
22 Prescott, AZ 86303

23 COPIES of the foregoing hand delivered
24 this 26th day of August, 2009, to:

25 The Hon. Thomas B. Lindberg
26 Judge of the Superior Court
27 Division Six
28 120 S. Cortez
Prescott, AZ 86303

and mailed to:

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Office of the Yavapai County Attorney
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Camp Verde, AZ 86322